

Remarks/Arguments

Claims 1-6 are pending in this application.

The Examiner has rejected claims 1-6 under 35 U.S.C. §102(b) as being anticipated by U.S. Application Publication No. 2002/0103752 to Berger et al. ("Berger"). Berger is newly cited art and all previously cited art has been withdrawn.

Improper Final Rejection

It is submitted that the finality of the Office Action is improper. According to MPEP 706.07, it is improper for the Examiner to issue a Final Office Action if Applicants do not amend the claims and newly cited art is used to reject the claims. In the previous Non-Final Office Action dated as mailed on September 18, 2008, the Examiner rejected claims 1-6 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,618,705 to Wang et al. ("Wang"). In the Non-Final Office Action Response, Applicants did not amend the claims and only argued the patentability of the claims over Wang. In the Final Office Action, the Examiner withdrew Wang and cited new art, i.e., Berger. Because Applicants did not make an amendment in the Non-Final Office Action and the Examiner cited new art in the Final Office Action, the finality of the Office Action is improper under MPEP 706.07. It is respectfully requested that the finality of the present Office Action be withdrawn.

Claims 1-6 Are Patentable over Berger

For a proper rejection under Section 102, the Examiner must demonstrate that the identical invention is "shown in as complete detail as contained in the....claim," and that the elements are "arranged as required by the claim...." M.P.E.P. § 2131. The Examiner has failed to meet this burden.

Claim 1 is directed to "generating a transaction . . . without the transaction being initiated by the merchant" and the transaction represents a "buyer initiated payment." As discussed in paragraph [0004], Berger recites "... for each credit card purchase a customer makes at a merchant's online storefront, the merchant computer establishes an electronic connection to the third party payment gateway and uploads to it the customer's credit card number and transaction amount" (emphasis added). See also Figure 1a of Berger. Thus, Berger teaches the merchant 14

initiates the transaction and payment thereof through the payment gateway server 18. However, Berger does not teach the transaction is generated “without the transaction being initiated by the merchant.” Berger does not disclose the “transaction representing the buyer initiated payment,” since the merchant in Berger initiates payment.

It is noted that Berger is directed to “enabling small merchants to accept electronic payment from credit and debit cards, or the like, without the need for the merchant to have an established merchant account” (paragraph [0013] of Berger). Thus, Berger is *only* directed to how merchants initiate transactions – not that transactions are generated without being initiated by the merchants.

Additionally, Berger does not teach an “acquirer being an entity that buys credit card receipts from the merchants,” as recited in claim 1. In rejecting this element, the Examiner cited paragraph [0025] of Berger. Paragraph [0025] of Berger states that “funds for the transaction that come from the credit card issuing bank are initially deposited by the payment processing authority to an acquiring bank.” The “acquiring bank” of Berger is not an “acquirer being an entity that buys credit card receipts from merchants.” An acquiring bank is a far cry from an entity that buys credit card receipts from merchants. In fact, an acquiring bank does not purchase any credit card receipts at all. There is absolutely no disclosure in paragraph [0025] of Berger, or any other portion of Berger, of an entity that “buys credit card receipts from merchants,” and certainly not any disclosure in Berger of “communicating electronically the payment instructions from the buyer to an acquirer . . . that buys credit card receipts from merchants.”

For all of the above reasons, Berger does not teach each and every element of claim 1 and thus, claim 1 is patentably distinguishable over Berger. Independent claim 5 recites features similar to claim 1 and is patentably distinguishable over Berger for the same reasons asserted for claim 1. Claims 2-4 and 6 are dependent from either claim 1 or claim 5 and are allowable for the same reason each base independent claim is allowable. Reconsideration and withdrawal of the rejection of claims 1-6 is respectfully requested.

Applicants believe they have responded to the Examiner's concerns, and that the application is in condition for allowance. Reconsideration of this application is hereby requested.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "R. Brian Drozd", written over a horizontal line.

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